***THE HON'BLE MR. JUSTICE G. CHANDRAIAH**

+Writ Petition No.14938 of 1994

%Dated 26-07-2005

#Between:

1. K.Durga Raju, S/o.Subbanna, aged about 58 years,

R/o.Miryalaguda

2. K.Ganemma, W/o.Subbanna (died)

3. Kum. Karuturi Meenakshi, D/o.Durga Raju,

Aged 19 years, R/o.Miryalaguda, Nalgonda District.

(The 3rd petitioner was brought on record as L.R. of

the deceased-2nd petitioner vide Court Order, dated

10.11.1998 in W.P.M.P.No.7736 of 1996) .. Petitioner

And

1. The District Collector, Nalgonda District, Nalgonda

2. The A.P. Housing Board rep. by Dy. Housing

Engineer, Miryalaguda, Nalgonda District

3. The Revenue Divisional Officer, Miryalaguda,

Nalgonda District

4. The Mandal Revenue Officer, Miryalaguda,

Nalgonda District

5. D.Sanjeeva Reddy, S/o.Matta Reddy,

Aged about 44 years, R/o.Gudur village,

Miryalaguda Mandal, Nalgonda District

6. M.Linga Reddy, S/o. Late Malla Reddy,

Aged about 60 years, R/o.Poosalapadu village,

Tripuraram Mandal, Nalgonda Dist.

(Respondents 5 and 6 are impleaded as per Court

Order, dated 21.3.1995 in WPMP No.3406 of 1995)

.....RESPONDENTS

! Counsel for the petitioners: Mr. G. Krishna Murthy

^Counsel for the respondents Nos.1, 3 and 4: G.P. for Revenue

^Counsel for the respondent No.2: Standing Counsel for A.P. Housing Board

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?Cases referred

2004(4) SCC 146

AIR 1959 SC 960

2004(1) SCC 438

AIR 1996 SC 114

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HONOURAHONOURABLE SRI JUSTICE G. CHANDRAIAH

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W.P.No.14938 of 1994

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ORAL ORDER:

This writ petition is filed questioning the proceedings of the 1st respondent-District collector, in case Nos.C3/DC/HS/11/93 and C3/DC/HS/12/93, dated 26.7.1994 confirming the orders passed by the 3rd and 4th respondents in Proceedings dated 3.6.1993 and 13.7.1990 respectively and quash the same and grant pattas in

favour of the petitioners to an extent of Ac.00.02 gts. of land each covered by S.No.650 of Miryalaguda, Nalgonda District under the provisions of the Act 21 of 1976.

During the pendency of the writ petition, the 2nd petitioner died. Therefore, the 3rd petitioner was brought on record by an order, dated 10.11.1998 in W.P.M.P.No.7736 of 1996. Similarly, the respondents 5 and 6 were also brought on record by virtue of the order, dated 21.3.1995 in W.P.M.P.No.3406 of 1995.

The facts relevant for appreciating the controversy may be briefly delineated as follows:

The petitioners filed an application under Section 6(1) of the Andhra Pradesh Occupants of Homesteads (Conferment of Ownership) Act, 1976 (hereinafter referred to “the Act) for issuance of certificate of ownership in respect of Ac.00.02 gts. each to the petitioners in S.No.650 situated at Miryalaguda, Nalgonda District. The 4th respondent-Mandal Revenue Officer, after considering the case of the petitioners, issued the proceedings in File No.A2/286/1986, dated 13.7.1990 rejecting their application. Aggrieved by the same, the petitioners filed an appeal before the 3rd respondent, who also dismissed the appeal in Case No.J/4796/1990, dated 3.6.1993. Further, the petitioners filed revision petition before the 1st respondent, which was also dismissed by an order, dated 26.7.1994 in Case No.C3/DC/HF/11/1993, CD/DC/HS/12/1993. Aggrieved by the same, this writ petition has been filed.

The case of the petitioners is that they are the residents of Tadiparru village, West Godavari District and eking out their livelihood by working as agricultural coolies. They migrated to Miryalaguda, Nalgonda District in the year 1969 and started working in the agricultural farm of one Ranga Rao at Miryalaguda. Ranga Rao was having an extent of Ac.13.04 gts. of land in S.No.650 at Miryalaguda. Out of the said land, the petitioners erected sheds in Ac.00.04 gts. of land in 1970 and looked after the agricultural operations. Those huts

were allotted House Nos.28-110/C, etc. in the year 1973 by the then Gram Panchayat. Ranga Rao sold away his lands to one K.Prabhakar Rao except Ac.00.04 gts. of land which was under the occupation of the petitioners. The petitioners continued their work as agricultural coolies with K.Prabhakar also. When the Municipality was constituted, the house number was changed as 28/149. In 1980, the entire land in S.No.650 was acquired for the purpose of Housing Board and took possession thereof except this Ac.00.04 gts. of land wherein the petitioners were living. On 24.6.1983, the petitioners filed an application under Section 6(1) of the Act before the 4th respondent, for issuance of certificate of ownership in respect of the huts that were in their possession. They also filed voters' list containing house numbers and also the revenue receipts issued by the revenue officials for the years 1972 to 1976. When the 4th respondent did not pass any order on the said application and took steps to evict the petitioners from their huts, they approached this Court in W.P.Nos.3233 and 3234 of 1986 which were disposed of by an order, dated 16.1.1999 directing the 4th respondent to dispose of the applications filed by the petitioners in accordance with law within a period of three months from the date of receipt of a copy of the order. The 4th respondent, without considering the material on record, passed an order, dated 13.7.1990 rejecting their case on the ground that the revenue receipts for the year 1972-1973 for Rs.00.25 paise said to have been issued by the patwari on 23.7.1985 after a period of 12 years, whereas the Government abolished the post of Patwari in the year 1985 itself. Aggrieved by the same, they filed an appeal under Section 8 of the Act before the Revenue Divisional Officer, who also rejected the petitioners' claim by an order dated 3.6.1993 on the ground that the provisions of the Act, 21 of 1976 are not applicable for grant of certificate of ownership in respect of the land claimed by them as Miryalaguda town was declared as Municipality on 2.1.1984. Challenging the said order, the petitioners also filed revision petition under Section 9 of the Act before the 1st respondent along with a stay application, but the 1st respondent refused to grant stay at that stage.

As there was a threat of dispossession of the petitioners from the land, the petitioners filed W.P.No.9794 of 1993 and obtained stay of dispossession in W.P.M.P.No.12388 of 1993. The 2nd and 4th respondents, with the help of the police, demolished the huts of the petitioners. On 8.11.1993, this Court disposed of the above writ petition directing the 1st respondent to dispose of the revision petition within a period of three months from the date of receipt of a copy of the order by directing him to conduct an enquiry to decide the issue whether the land in question in occupation of the petitioners was covered by acquisition proceedings and possession was taken in pursuance of the same. If, on enquiry, it is found that the land is not covered by the notification, he shall dispose of the revision petition duly taking into account the rights acquired by the petitioners as on the date of filing the application under the Act. It is further ordered that it is needless to say that any constructions will be subject to the result of the revision petition pending before the 1st respondent. It is also stated that the petitioners filed I.A.No.1911 of 1993 before the 1st respondent requesting him to appoint a Commissioner to conduct an enquiry as per the directions of this Court to ascertain the occupations of the petitioners' lands covered by an extent of Ac.00.02 gts. in acquisition proceedings, dated 29.8.1980 under Section 4(1) of the Act, but the 1st respondent-District Collector, without passing any order on the above I.A., dismissed the revision petition on 26.7.1994 on the ground that the petitioners were never in possession of the land before it was acquired. It is also the case of the petitioners that they were forcibly evicted from the land in question in the month of July, 1993 at the instance of the local political people. Therefore, all the authorities including the 1st respondent rejected the claim of the petitioners erroneously without considering necessary provisions of law and also the relevant records placed before them, as such, the same is arbitrary and illegal and the petitioners are entitled to the issuance of certificate of ownership under Section 6(1) of the Act.

Respondents 1, 3 and 4 filed their counter affidavit denying the claim of the petitioners and stated that the total extent of land in S.No.650 situated at Miryalaguda Town was Ac.13.04 gts. Out of which, the Government acquired Ac.13.02 gts. and handed over the possession to the Housing Board on 10.12.1980 for construction of residential houses in the year 1980 leaving Ac.00.02 gts. which was covered by P.W.D. road. The revenue receipts produced by the petitioners to establish their possession of the suit land proved fake, as they were issued with anti dates after abolition of V.A.O. system. The petitioners have not made any representations when the L.A. proceedings were initiated for acquisition of the land. The Homestead Act came into force on 14.8.1975 and the petitioners kept silent upto 1983 by which time, the land in S.No.650 was handed over to the Housing Board on 10.12.1980, whereas, the petitioners, on 24.6.1983, came with a plea for conferment of patta under the Act which is nothing but an after thought to grab the land of the Government acquired property. In order to prove the possession over the suit land, the petitioners produced land receipts, which were proved fake. There was no land revenue to the land occupied for the house sites. In fact, there was non-agricultural assessment for such land under the provisions of A.P. NALA Act, 1963 under residential category, but the petitioners failed to produce the receipts of tax payment under NALA Act, 1963. This clearly shows that the petitioners were not in possession of the suit land.

Respondents 5 and 6 (impleaded respondents) filed counter stating that in the year 1980, an extent of land admeasuring Ac.42.06 gts. situated in various S.Nos. including S.No.650 of Miryalaguda was acquired for Housing Board. As per the record, the total extent of the land situated in S.No.650 was Ac.13.04 gts. and out of the same, an extent of Ac.00.02 gts. of land is covered by PWD road leading from Miryalaguda to Vadapalli and the remaining extent of area i.e. Ac.13.02 gts. was handed over to the A.P. Housing Board on 10.12.1980 and an award to that effect was passed in 18.8.1983. It is also stated that HIG house Nos.1 and 2 were constructed in Ac.00.04

gts. of land in question. The construction was over long back which was allotted to the respondents 5 and 6. Therefore, the petitioners are not entitled to any relief.

In view of the above background, the following issues fall for consideration.

1. *Whether the petition, dated 24.6.1983 filed under Section 6(1) of the Act for issuance of certificate of ownership of homestead in the municipal area is maintainable under the Act?*

2. *Whether the petitioners proved their possession before the authorities for the purpose of issuance of certificate of ownership under the provisions of the Act?*

3. *Whether the order passed by the 1st respondent suffers from legal infirmity?*

Heard the learned counsel for both the parties and perused the material placed on record.

The learned counsel for the petitioners has vehemently contended that the petitioners were in possession of their dwelling houses since 1970 in the land in question and they produced the evidence of their possession by way of voters' list and also the revenue receipts from 1970 onwards and also they filed an application on 24.6.1983 under Section 6(1) of the Act. He has further submitted that Section 2 of the Act declares that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) an (c) of the Article 39 of the Constitution of India. In view of the expression "homestead" as defined under sub-section (9) of Section 3 of the Act, the petitioners were living in a dwelling house referred under sub-section (7) of Section 3 of the Act and they are also occupants of the homestead within the definition contemplated under sub-section 13 of Section 3 of the Act, and the petitioners. The learned

counsel has further submitted that on the false complaints given by the 2nd respondent-official, a false case in C.C.No.389 of 1993 was lodged against the 1st petitioner and others alleging that on 17.7.1993, at about 12:00 hours, the 1st petitioner and 29 others were making attempts to occupy the A.P. Housing Board lands wherein construction of HIG houses were in progress and those persons caused damages to the structures, fencing and pits. In the said C.C., the 1st petitioner and others were acquitted by the judgment, dated 28.10.1997 wherein, it is clearly admitted by the Housing Board officials that the petitioners were in possession of the land claimed by the petitioners and the same is binding on the authorities. Therefore, the petitioners are entitled to the issuance of certificate of ownership under the provisions of the Act.

The learned Government Pleader for Revenue appearing for the respondents 1, 3 and 4 has submitted that Miryalaguda was declared as Municipality in the year 1983 and sub-section 4 of Section 1 contemplates that it shall apply to all local areas of the State, other than those comprised within the jurisdiction of the Municipal Corporation of Hyderabad and of any municipality constituted under the Andhra Pradesh Municipalities Act, 1965 and the petitioners stated to have made an application on 24.6.1983 under Section 6(1) of the Act. Miryalaguda was declared as Municipality, as such, the provisions of the Act have no application. Therefore, the application submitted by the petitioners is not maintainable in law.

The learned standing counsel for the 2nd respondent as well as the learned counsel for the respondents 5 and 6 have submitted that the petitioners had no vested right in the land in question as the entire land physically available in Sy.No.650 which was acquired under the provisions of the Land Acquisition Act by invoking urgency clause and delivered the possession to the Housing Board on 10.12.1980, there was no existence of the petitioners in any manner in the land acquisition proceedings,

further, the petitioners stated to have filed an application on 24.6.1983 when Miryalaguda village was Gram Panchayat, but in 1984, it became Municipality. The authorities have to consider the legal position prevailing on the date of taking decision and not the position prevailing on the date of making application. If that is so, the application of the petitioners is not maintainable under sub-section(1) of Section (6) of the Act. The learned counsel has placed reliance for the above submission on the judgment reported in ***Chief of Marketing (Marketing Division), Coal India Ltd. Vs. Mewat Chemicals & Tiny SSI Coal Pulverizing Unit*** wherein it was held to the following effect:

> *"In our view, the High Court was also in error in concluding that the position prevailing on the date of the application must apply. It is settled law that there is no vested right when a person makes an application. The position prevailing at the time of the allotment is to apply. Before the allotment was made, the circular dated 5.1.1995 had already been issued. The Coal Controller whilst allotting was bound to take note of that circular. The Joint Secretary by his fax dated 8.1.1996 had brought it to the notice of the Coal Controller. Thereafter, guidelines had also been issued on 23.4.1996. The Coal Controller was bound to take note of those guidelines also. We are unable to understand the reasoning given by the High Court that those guidelines had been issued by a Director and thus could not be said to be the guidelines issued by the Central Government. These guidelines have been issued by the Ministry of Coal. Merely because they are forwarded not by a Joint Secretary, but by a Director would not mean that they are not binding on the Coal Controller. If there was any doubt as to whether they had been issued by the Central Government, the Coal Controller should have asked for clarification from the Central Government."*

I find force in the submissions made by the respondents that as on the date of passing the impugned order, Miryalaguda town was declared as Municipality. Therefore, in view of sub-section (4) of Section (1) of the Act, the petitioners' representation is not maintainable and they are not entitled to any relief based on the said representation. The first issue is answered in the negative.

In connection with the second issue, the learned counsel for the petitioners submitted that the petitioner was in possession of the land in question since 1970 and submitted the voters' list indicating that their dwelling houses were allotted house numbers by the then Gram Panchayat and also the Municipality, and they also filed cist receipts of 1970 and onwards. He has further submitted that in the judgment rendered in C.C.No.389 of 1993, dated 28.10.1997 on the file of the Judicial First Class Magistrate, Miryalaguda, PW1 admitted that the petitioners were in possession and enjoyment of the land in question, thereby, they proved their possession, but all the respondents including the 1st respondent erroneously failed to consider the evidence produced by the petitioners and rejected their claim.

The learned Government Pleader for Revenue submitted that as it is already stated categorically in the counter affidavit that several lands including the land in S.No.650 acquired under the provisions of the Land Acquisition Act and urgency clause invoked, possession was taken and handed over to the Housing Board on 10.12.1980. The total extent of land in S.No.650 is Ac.13.04 gts. Out of which, Ac.13.02 gts. was taken over by the Housing Board and the remaining Ac.00.02 gts. was covered by PWD road. Further, he submitted that in view of section 16(a) of the Act 21 of 1976, the provision of the said act shall not apply to the lands held by the Government or any local authority.

The learned standing counsel for the 2nd respondent submitted that in view of sub-section (10) of Section 3 of the Act, as the land in question is not meant for house site, as it was an agricultural land, the petitioners' claim is not tenable under law. In respect of the evidence of PW1 in C.C.No.389 of 1993, the learned standing counsel submitted that it is not a judgment on the possession of the land claimed by the petitioners and the findings of the Criminal Court are not binding on the authorities with regard to the possession claimed by the petitioners, and further, he placed

reliance on the judgment reported in ***Binaka Vs. Charan Singh*** wherein the Apex Court observed as under:

> *"This leads us to the consideration of the legal effect of the order made by the Magistrate under Section 145 of the Code of Criminal Procedure. Under Section 145(6) of the Code, a Magistrate is authorized to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of the peace, and with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The Privy Council in Dinomoni Chowdharani v. Brojo Mohini Chowdhrani, (1901) 29 Ind. App. 24, 33, tersely states the effect of orders under Sec. 145 of the Code of Criminal Procedure thus:*
>
> > *"These orders are merely police orders made to prevent breaches of the peace. They decide no question of title……."*
>
> *We therefore, hold that a provisional order of a Magistrate in regard to possession irrespective of the rights of the parties cannot enable a person to resist the suit under Section 180 of the Act."*

He also placed reliance in the case of ***Shanti Kumar Panda Vs. Shakuntala Devi,*** wherein it was held as follows:

> *"A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Section 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence."*

He further submitted that the petitioners themselves filed a copy of

the award No.5 of 1983, dated 18.8.1983, wherein it is held that the DM & DD under Section 4(1) and 6 of Land Acquisition Act were published on 29.8.1980 invoking the urgency clause and possession was taken and pursuant to which the possession was handed over to the Housing Board on 10.12.1980. Under the said notification only, Ac.13.02 gts. of land in S.No.650 was handed over to the Housing Board for construction of HIG houses and the remaining Ac.00.02 gts. is covered by the PWD road. Therefore, the petitioner was in possession and enjoyment of the said land.

The learned counsel for the 5th and 6th respondents submits that the Housing Board constructed HIG houses and HIG quarter Nos.1 and 2 were allotted in their favour which are located in the land claimed by the petitioners. Therefore, the petitioners were never in possession and enjoyment of the land. He also submitted that while taking the possession of the land by the Housing Board, the 1st petitioner was one of the signatories of the Panchanama. The learned counsel for the petitioners does not dispute this aspect. The petitioners never filed any petition before the Land Acquisition Officer claiming any right over the land in question during the pendency of the earlier proceedings. The petitioners filed O.S.No.35 and 36 of 1984 on the file of the District Munsif' Court, Miryalaguda seeking injunction and the same was dismissed. Therefore, making the claim by the petitioners for the possession of the land in question constitutes *res judicata* for entertaining the applications filed by the petitioners under the Act.

All the authorities, who considered the case of the petitioners held that the petitioners were not in possession of the land claimed by them which is a concurrent finding of fact. In view of the same, the factum of possession cannot be gone into under Article 226 of Constitution of India. The second issue is answered in the negative.

As far as the third issue is concerned, in the operative portion of the impugned order, the 1st respondent held that it is not denied

that the land was acquired and possession was taken over in the year 1980 and it is also not denied that the application under the Act was filed in the year 1983 before the Tahasildar. If the petitioners were in possession of the land earlier to the date of acquisition, they would have been paid the compensation after the acquisition of the land by the Housing Board or at least a discussion, as such, their occupation would be there in the award. The huts lying therein would have been estimated by the Engineer concerned for the payment of compensation. These things did not take place which would clearly go to show that they were never in possession of the land before the land was acquired. Hence, the ingredients of Act are not satisfied and they are not applicable to the facts of this case. The 1st respondent viewed the petitioners' case elaborately and rejected their claim of the petitioners on merits on the ground that the petitioners failed to prove their possession to make a claim under the Act. Therefore, the impugned order passed by the 1st respondent does not suffer from any legal infirmities warranting interference of this Court.

When this Court entertained a doubt whether the petitioners are in possession of the disputed land as on the date, the learned counsel for the petitioners submitted that the petitioners are not in possession of the land but submitted that there is an extent of Ac.00.10 gts. of land in the land acquired by the Housing Board in which the petitioners may be considered for allotment for the purpose of house sites each Ac.00.02 gts. of land or in any government land. There is no material before the Court with regard to the availability of Ac.00.10 gts. of open land acquired by the Housing Board and for what purpose the said land is left for and what is the nature of the land, in the absence of which, it is not possible for this Court to give any direction to consider the case of the petitioners for allotment of Ac.00.02 gts. of land each for house sites in the alleged Ac.00.10 gts. of land belonging to the A.P. Housing Board. Accordingly, the submission made by the learned counsel for the petitioners cannot be accepted.

Insofar as the submission made in respect of the allotment of the house sites in any vacant Government land to the petitioners is concerned right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution of India as held by the Apex Court reported in the case of ***U.P. Avas Evam Vikas Parishad Vs. Friends Cooperative Housing Society Limited*** wherein the Apex Court recorded the following finding:

> *"The question then is whether present is a fit case for our interference under Art. 136. On similar facts when the appellant itself has compromised with others and the same has not been extended to the respondents, we think that it is not a fit case for our interference. The respondents' society also consist of the members who need sites for construction of their houses. Right to shelter is a fundamental right, which springs from the right to residence assured in Art. 19(1)(e) and right to life under Art. 21 of the Constitution. No doubt, their construction has also to be in accordance with lay out and building rules but that would not be a ground to refuse permission to them when they approached the authorities to sanction the same in accordance with law."*

Whenever the authorities notified the scheme for allotment of house sites, it is open for the petitioners to make an application for allotment of house sites and the authorities concerned may consider the case of the petitioners if they are otherwise found eligible.

With the above direction, the writ petition is disposed of. No costs.

(G. CHANDRAIAH, J.)

26th July, 2005

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Note: L.R.copy to be marked

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